

1 DAVID W. SHAPIRO (NYSBN 2054054)
United States Attorney

2 LESLIE R. CALDWELL (NYSBN 1950591)
3 Chief, Criminal Division

4 SCOTT H. FREWING (CSBN 191311)
Assistant United States Attorney

5 280 South First Street, Suite 371
6 San Jose, California 95113
7 Telephone: (408) 535-5060

8 Attorneys for the United States of America

Filed

OCT - 5 2001

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12
13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 ROGER VER)

17 Defendant.)

No. CR 01-20127 JF

PLEA AGREEMENT

18
19 I, Roger Ver, and the United States Attorney's Office for the Northern District of California
20 (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to
21 Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to waive indictment and plead guilty to Counts One, Two, and Three of the
24 captioned information charging me with dealing in explosives without a license, in violation of 18
25 U.S.C. § 842(a)(1); storing explosives in a manner not in conformity with regulations, in violation
26 of 18 U.S.C. § 842(j) and 27 C.F.R. §§ 55.201(f), 55.208(b); and mailing injurious articles, in
27 violation of 18 U.S.C. § 1716. I agree that the elements of the offense and the maximum penalties
28 are as follows:

PLEA AGREEMENT

1 Count One: 18 U.S.C. § 842(a)(1) – Dealing in Explosives without a License

2 Elements: (1) defendant engaged in the business of dealing explosives; and
3 (2) defendant did not obtain a license (pursuant to 18 U.S.C. § 843).

4 Maximum Penalties:

- | | | | |
|---|----|---------------------------------|-----------|
| 5 | a. | Maximum prison sentence | 10 years |
| 6 | b. | Maximum fine | \$250,000 |
| 7 | c. | Maximum supervised release term | 3 years |
| 8 | d. | Mandatory special assessment | \$100 |

9 Count Two: 18 U.S.C. § 842(j) and 27 C.F.R. §§ 55.201(f), 55.208(b) – Storing Explosives
10 in a Manner Not in Conformity with Regulations

11 Elements: (1) defendant stored explosive materials; and
12 (2) the storage of the explosives did not comply with regulations issued by
13 the Secretary of the Treasury.

- | | | | |
|----|----|---------------------------------|-----------|
| 14 | a. | Maximum prison sentence | 1 year |
| 15 | b. | Maximum fine | \$100,000 |
| 16 | c. | Maximum supervised release term | 1 year |
| 17 | d. | Mandatory special assessment | \$25 |

18 Count Three: 18 U.S.C. § 1716 – Mailing Injurious Articles

19 Elements: (1) defendant knowingly mailed, or caused to be mailed;
20 (2) items declared nonmailable in Title 18, United States Code,
21 Section 1716; and
22 (3) not in accordance with the rules and regulations authorized by the Postal
23 Service.

- | | | | |
|----|----|---------------------------------|-----------|
| 24 | a. | Maximum prison sentence | 1 year |
| 25 | b. | Maximum fine | \$100,000 |
| 26 | c. | Maximum supervised release term | 1 year |
| 27 | d. | Mandatory special assessment | \$25 |

28 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the

1 following facts are true:

2 a. Beginning in January 1999 and continuing through August 2000 I did engage
3 in the business of selling explosives without a license. I purchased "Pest Control Report 2000"
4 devices from All Purpose Ammunition in South Carolina on at least five occasions, and solicited
5 bidders for the explosive devices on the online auction site eBay, located in San Jose, California.
6 The Pest Control Report 2000 is an explosive device, and I purchased approximately 49 pounds of
7 the devices, and sold at least 14 pounds of the devices, while I was engaged in the business of selling
8 them. I never obtained a license to deal in explosives.

9 b. While engaging in the business of selling explosive devices, I stored the
10 devices in a manner contrary to regulations issued by the Secretary of the Treasury. Specifically, I
11 stored explosives in an apartment I rented in a residential apartment building located at 2147
12 Newhall Street, apartment 622, in Santa Clara, California. I also knowingly permitted an individual
13 to reside in the apartment where I stored the explosive materials. I did not notify the authority
14 having jurisdiction for fire safety in Santa Clara County of the type, magazine capacity, and location
15 of the storage of the explosive materials in the apartment on Newhall Street.

16 c. While engaging in the business of selling explosive devices, I also knowingly
17 mailed the explosive devices and caused the explosive devices to be mailed. The explosive devices
18 are items declared nonmailable in Title 18, United States Code, Section 1716. I caused the devices
19 to be mailed via United States mail, in a manner contrary to regulations authorized by the Postal
20 Service. Specifically, as alleged in Count Three, on or about April 2, 1999, in Santa Clara County,
21 I mailed or caused to be mailed a package of explosive devices to Jim Boulton, an individual in
22 Santa Cruz, California.

23 3. I agree to give up all rights that I would have if I chose to proceed to trial, including
24 the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government
25 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
26 Amendment claims; to any further discovery from the government, as may be limited by United
27 States v. Ruiz, 241 F.3d 1157 (9th Cir. 2001); and to pursue any affirmative defenses and present
28 evidence.

1 4. I agree to give up my right to appeal my conviction, the judgment, and orders of the
2 Court. I also agree to waive any right I may have to appeal my sentence.

3 5. I agree not to file any collateral attack on my conviction or sentence, including a
4 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except that I reserve
5 my right to claim that my counsel was ineffective in connection with the negotiation of this plea
6 agreement or the entry of my guilty plea.

7 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered,
8 unless the Court declines to accept the sentence agreed to by the parties. I agree that the government
9 may withdraw from this agreement if the Court does not accept the agreed upon sentence set out
10 below.

11 7. I agree that the Sentencing Guidelines should be calculated as follows, and that I will
12 not ask for any other adjustments to or reductions of or downward departures from the offense level:

- | | | | |
|----|----|--|-----------|
| 13 | a. | Base Offense Level, U.S.S.G. § 2K1.3(a): | 12 |
| 14 | b. | Specific offense characteristics:
(2K1.3(b)(1) > 25 pounds distributed) | +1 |
| 15 | c. | Amount of loss/drugs: | N/A |
| 16 | d. | Increase/decrease for role in the offense: | N/A |
| 17 | e. | Grouping Counts One, Two, Three
Counts Group pursuant to 3D1.2 | +0 |
| 18 | f. | Acceptance of responsibility:
(If I meet the requirements of
U.S.S.G. § 3E1.1) | <u>-2</u> |
| 19 | | | |
| 20 | | | |
| 21 | g. | Adjusted offense level | 11 |

22 8. I agree that an appropriate disposition of this case is as follows: Sentencing Guideline
23 level 11 (eleven) and a \$150 special assessment. The parties have not agreed on a specific number
24 of months of imprisonment, the number of years of supervised release, or the amount of a fine. I
25 agree that I will make a good faith effort to pay any fine, forfeiture, or restitution I am ordered to pay.
26 Before or after sentencing, I will, upon request of the Court, the government, or the U.S. Probation
27 Office, provide accurate and complete financial information, submit sworn statements and give
28 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as a

1 result of my crimes, and release funds and property under my control in order to pay any fine,
2 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

3 9. I agree not to commit or attempt to commit any crimes before sentence is imposed
4 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
5 release; intentionally provide false information to the Court, the Probation Office, Pretrial Services,
6 or the government; or fail to comply with any of the other promises I have made in this Agreement.
7 I agree that, if I fail to comply with any promises I have made in this Agreement, then the
8 government will be released from all of its promises below, but I will not be released from my guilty
9 plea.

10 10. I agree that this Agreement contains all of the promises and agreements between the
11 government and me, and I will not claim otherwise in the future.

12 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District
13 of California only, and does not bind any other federal, state, or local agency.

14 The Government's Promises

15 12. The government agrees to move to dismiss any open charges pending against the
16 defendant in the captioned indictment at the time of sentencing.

17 13. The government agrees not to file or seek any additional charges against the defendant
18 that could be filed as a result of the investigation that led to the captioned indictment.

19 14. The government agrees that the appropriate sentence in this case should be as set forth
20 in paragraph 8 above, unless the defendant violates the agreement as set forth in paragraph 9 above.

21 The Defendant's Affirmations

22 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
23 Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

24 16. I confirm that while I considered signing this Agreement, and at the time I signed it,
25 I was not under the influence of any alcohol, drug, or medicine.

17. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.


Dated: 10-5-01



ROGER VER
Defendant

ROBERT S. MUELLER, III
United States Attorney


Dated: 10/5/2001



SCOTT H. FREWING
Assistant United States Attorney

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: 10-5-01



STUART D. KIRCHICK
Attorney for Defendant

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